

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated August 30, 2006 (hereinafter Office Action) have been considered. Claims 1-36 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Submitted along with this Office Action response is an Information Disclosure Statement and Form 1449 along with copies of publications listed on the Form 1449.

Claims 1-36 stand rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Publication No. 2003/0153954 by *Park et al.* (hereinafter "*Park*").

Applicant respectfully disagrees with the Examiner's characterization of *Park* and the contention that *Park* anticipates these claims. Applicant respectfully asserts that several features recited in independent claims 1, 20, and 31 are not disclosed in *Park*.

To anticipate a claim, the asserted reference must clearly and unequivocally disclose every element of the claimed invention. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. All claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102.

Park discloses a cardiac stimulation device that uses overdrive pacing to treat sleep apnea. ([0021]). *Park* discloses several embodiments of overdrive pacing, including setting pacing at preselected rate that is known to be higher than a possible intrinsic rate, or adding an increment to an intrinsic rate. ([0093]). *Park* discloses detecting intrinsic activity of the heart and then increasing the pacing rate by a small increment when the intrinsic activity is detected. ([0092]). *Park* also discloses periodically scanning for an inhibited pace by decrementing the pacing rate. Once an inhibited cycle occurs, the pacing rate is held constant at the rate at which the inhibited cycle occurs with or without a rate decrement. ([0094-0095]).

In all embodiments disclosed, *Park*'s determining of an overdrive pacing rate only involves determining the pacing rate based on a preselected rate, or by incrementing the

pacing rate when intrinsic activity occurs, or by scanning for an inhibited pace by decrementing the pacing rate until a pace is inhibited and setting the rate based on the rate of the inhibited cycle. *Park* does not describe determining the duration of a cardiac interval or setting the pacing interval using both a duration of a cardiac interval between cardiac beats and a previous indicated pacing interval.

Applicant's independent claims 1, 20 and 31 include, among other limitations, some variation of determining a first indicated pacing interval based at least on a cardiac interval duration and a previous value of the first indicated pacing interval. Stated here for purposes of informing and not for limitation, Applicant's Specification discusses use of a first indicated pacing interval at page 13, line 24 through page 14 line 8, among other locations.

No embodiment disclosed by *Park* includes determining an indicated pacing interval by using both a cardiac interval duration and a previous indicated pacing interval. While the *Park* reference may teach using looking for intrinsic activity to determine an overdrive rate, it does not also teach the use of a previous first indicated pacing interval in that calculation. In regard to *Park's* scanning operation, *Park's* disclosed device is searching for an inhibited pace and thus does not obtain a cardiac interval when conducting the scan for use in determining the pacing interval.

Dependent claims 2-19, 21-30 and 32-36, which are dependent from independent claims 1, 20 and 31, respectively, were also rejected under 35 U.S.C. §102(a) as being unpatentable over *Park*. While Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1, 20 and 31. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited reference. Therefore, dependent claims 2-19, 21-30 and 32-36 are also not anticipated by *Park*.

Applicant does not acquiesce to Examiner's characterization of the asserted art or Applicant's claimed subject matter, nor of the Examiner's application of the asserted art or combinations thereof to Applicant's claimed subject matter. Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to

one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Applicant respectfully asserts that the application is in condition for allowance. Authorization is given to charge Deposit Account No. 50-3581 (GUID.128PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact her to discuss any issues related to this case.

Respectfully submitted,

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Date: November 30, 2006

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